

BURTON E. EDWARDS

IBLA 83-658

Decided December 13, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting a protest of the results of the dependent resurvey of a portion of secs. 4, 5, 8, and 9, T. 37 N., R. 22 W., Principal meridian, Montana.

Affirmed.

1. Surveys of Public Lands: Dependent Resurveys

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

APPEARANCES: Burton E. Edwards, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Appellant Burton E. Edwards (Edwards) has appealed from the decision dated April 21, 1983, of the Montana State Office, Bureau of Land Management (BLM), denying his protest of the placement of the section corner common to secs. 4, 5, 8, and 9, T. 37 N., R. 22 W., Principal meridian, Montana, by reestablishment of a corner determined by the Cadastral Survey to have been obliterated.

Pursuant to special instructions issued on February 14, 1978, and supplemental special instructions issued on July 10, 1979, a resurvey of certain lands located in T. 37 N., R. 22 W., Principal meridian, Montana, was conducted by the Cadastral Survey. During the course of this resurvey, the corner common to secs. 4, 5, 8, and 9 was remonumented. The original survey was conducted in 1893. While no evidence of the original corner was found, a corner set by Marquardt Engineering and Surveying, a local licensed surveying firm, was accepted as "a careful and faithful reestablishment of the original corner."

Shortly after the dependent resurvey commenced, appellant objected to the proposed location of the corner in question. The file demonstrates that the cadastral surveyor considered each contention of appellant prior to

making final determination with respect to the location of the corner. Survey personnel made numerous trips to the site to examine the evidence claimed by appellant to be proof of the location of the corner. Records of the local survey firms were searched and re-searched. Local surveyors were interviewed in an attempt to shed light on the location of the corner.

The BLM letter denying appellant's protest stated the reasons for the BLM determination and gave a detailed answer to each element of the protest submitted by appellant as well as an outline of the steps taken by the cadastral surveyor in an effort to authenticate the evidence tendered by appellant and others. It also explained, with reference to the Manual of Surveying Instructions, 1973, how the location of the Marquardt corner was determined as the best evidence of the location of the corner and why it was subsequently accepted.

On May 16, 1983, Edwards filed notice that he was "appealing this erroneous re-location as of this date of May 11, 1983." Edwards further stated that "[t]here is sound evidence that your accepted section corner re-location does not conform to the original General Land Office Field Notes which have for years been accepted by the original land owners."

[1] As we have indicated above, the decision denying the protest specifically responded to each element of the protest and narrated pertinent details of the resurvey. Appellant has not clearly demonstrated that the surveyors departed from prescribed procedures or that any of the results reached was erroneous. The record shows that BLM diligently examined the evidence submitted by appellant and other landowners before making a final determination: The allegations on appeal fail to significantly challenge the resurvey in general and the location of the corner in particular. Accordingly, appellant has not met his burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Robert J. Wickenden, 73 IBLA 394 (1983); Bethel C. Vernon, 37 IBLA 226 (1978). Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed. Bethel C. Vernon, 47 IBLA 315 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

James L. Burski
Administrative Judge

